

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

United States of America,	)	Cr. No. 3:11-245 (CMC)
	)	
v.	)	<b>OPINION and ORDER</b>
	)	
Howard Logan,	)	
	)	
Defendant.	)	
_____	)	

This matter is before the court on Defendant's Motion to compel the Government to file a Rule 35 motion. ECF No. 487. The Government has responded in opposition, indicating that the Government has not chosen to exercise its discretion to file a Rule 35(b) motion for sentence reduction. Defendant has not responded to the Government's position on this matter.

Under Rule 35(b), the decision to move for reduction of sentence is solely in the discretion of the Government. The district court is without authority to compel such a motion unless Defendant can show that his cooperation is complete, and that the Government breached the plea agreement or that the Government's failure to file resulted from an unconstitutional motive or was not rationally related to a legitimate government goal. *Wade v. United States*, 504 U.S. 181, 185-86 (1992); *United States v. Butler*, 272 F.3d 683, 686 (4th Cir. 2001). Defendant must make a "substantial threshold showing," *Wade*, 504 U.S. at 186, of either of these elements which should constitute more than a recitation of the assistance provided.

Defendant has not provided any evidence of a breach of the plea agreement by the Government, nor has he made a "substantial threshold showing" relating to either element noted above. Therefore, for this reason, and for the reasons noted by the Government in its response,

Defendant's motion is **denied**.

**IT IS SO ORDERED.**

s/ Cameron McGowan Currie  
CAMERON MCGOWAN CURRIE  
SENIOR UNITED STATES DISTRICT JUDGE

Columbia, South Carolina  
October 4, 2013